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CONSUMER RIGHTS AND CREDIT SALES

§ 26. 1. Introduction

This consumer rights chapter describes consumer rights when entering into a credit sales transaction. Much of our advice is largely taken from information published by the Maine Office of Consumer Credit Regulation, which is statutorily authorized to enforce Maine credit laws. All consumer complaints concerning credit transactions (e.g., complaints dealing with mortgage lenders, debt collectors, credit reporting agencies, arrangers of credit,¹ credit repair companies, debt management companies, money order issuers, owner finance companies, such as some auto dealers) should be first reported to the Office of Consumer Credit Regulation. That agency will investigate your complaint and help you enforce your credit rights. Its address is:

Office of Consumer Credit Regulation
35 State House Station
Augusta, Maine 04333-0035
(207) 624-8527

Consumer Toll Free Line: 1-800-DEBT LAW (1-800-332-8529)

Credit complaints dealing with banks and credit cards should be referred to the Maine Bureau of Banking. Its Address is:

Consumer Outreach Program
36 State House Station
Augusta, Maine 04333-0036
Tel: 207-624-8570

This chapter contains the following sections:

- § 26. 2. Credit Bureaus And Credit Reports**
- § 26. 3. Credit Card Consumer Protections**
- § 26. 4. Fair Credit Billing Laws**
- § 26. 5. Debt Collection Practices**
- § 26. 6. Repossessions Of Goods In Maine**
- § 26. 7. Check Cashing Consumer Protections**
- § 26. 8. Truth In Lending Disclosures When Granting Credit**
- § 26. 9. Maximum Finance Charges**
- § 26. 10. Co-signing A Loan**

¹ See e.g., *State v. Wolfe*, No. CV-91-233 (Me. Super. Ct. Kenn. Cty., May 3, 1996) (illegal provider of credit services fined \$3,000 for civil violation of Maine Consumer Credit Code and \$4,000 for violation of Maine Unfair Trade Practices Act).

§ 26. 11. Lease And Rent-To-Own Purchases**§ 26. 12. Pawn Brokers****§ 26. 13. Seeking Help****§ 26. 14. Correcting An Incorrect Credit Report****§ 26. 15. Obtaining A Copy Of Your Credit Report****§ 26. 16. When The Seller Assigns Your Credit Contract To A Finance Company****§ 26. 2. Credit Bureaus And Credit Reports*****A. What is a Credit Report?***

A credit report, also called a “consumer report,” contains information about your credit worthiness. The information is on file with a credit bureau, or “consumer reporting agency.” The data consists of your “track record” of payments on charge accounts, loans and credit card accounts. Credit bureaus (or credit reporting agencies) are regulated through the Maine Fair Credit Reporting Act.²

If you apply to a company for credit, the company often obtains a credit report from a credit bureau, to help it decide whether to grant your application. The company may obtain the information from the credit bureau in writing, electronically or by telephone.

Credit bureaus are “information clearinghouses,” which collect and store data provided by many of your creditors. Those creditors provide information by computer tape to credit bureaus on a periodic basis. For a fee, the credit bureaus then assemble and deliver the information to their business customers.

B. Rejection of a Credit Application

Maine and federal law require that a creditor inform you if a credit report was the reason for the denial of credit. You must also be told the name and address (and, in Maine, the phone number) of the credit bureau which provided the report, to help you contact that bureau.

You may learn all the information in your credit report by personally inspecting the files (if they are located in the state), by requesting a copy of your report by mail, or by telephoning the credit bureau. If you have recently been denied credit based on the report, the law requires that the bureau provide you with all the information on your report, upon request, at no charge to you. If you are simply curious about the contents of your report, the bureau may charge you a nominal fee of up to two dollars (\$2.00), plus any actual copying costs. Credit bureaus operating wholly out-of-state may require a written request prior to releasing information by telephone, and may charge slightly more for written reports.

C. The Contents of a Credit Report

Report forms differ from bureau to bureau, but each contains a list of your creditors, as well as a history of your payment habits. Specifically, the report will include:

- (1) A list of current or past accounts (stores, credit cards, loans, etc.) on file with the bureau;

² 10 M.R.S.A. §§ 1311-1329.

- (2) Your credit limit, highest amount borrowed or initial balance on each account;
- (3) The current status of each account;
- (4) The maximum delinquency for each account (*i.e.*, how far behind you have been in payment during the history of the account);
- (5) An “inquiry” list; in other words, a list of companies which have received copies of your credit report; and
- (6) Other information deemed relevant to your credit worthiness, including any collection actions, bankruptcies, liens or judgments.

This information is listed using letter and number codes. The information in your credit report is not always correct. Data regarding a debtor with a name similar to yours could have been included in your report, or incorrect information could have been provided by various merchants to the credit bureau.

Recently, the three major credit bureaus (*see below* ¶ I) have begun to release to consumers their “credit scores.” The most widely used score is called the FICO. It is a three digit number, from 300 to 850. Here is a general guide, prepared by E-Loan (www.eloan.com):

- (1) Excellent – scores above 730;
- (2) Good – 700-729;
- (3) Needs a Closer Look by Lender – 670-699;
- (4) Higher Risk – 585-699; and
- (5) No Credit or Limited Credit – below 585

D. Correcting Your Credit Report

You can request that the credit bureau investigate each disputed item. Maine law requires that the bureau complete the investigation within twenty-one (21) calendar days. (Federal law is less specific, requiring that such investigations be completed “within a reasonable period of time.”) If at the end of that period you are proven correct, or if the original information cannot be verified, the bureau must remove the information from its records. It cannot reinsert the information at a later date, unless the item is later verified. After the credit bureau completes its investigation, the law requires that it notify you immediately of the results. Remember, Maine law places the responsibility for accuracy and verification on the credit-reporting agency, *not* the consumer or reporting creditors.

If one of your creditors has made an error, the Fair Credit Billing Act requires that it be fixed. However, you must request correction within 60 days of receipt of the incorrect bill. *See* §26.14 for a sample letter to your creditor.

If your report contains errors, circle the disputed items on your report and return the report with a cover letter indicating you are disputing the entry. Retain a copy of each report and send the originals back to the credit-reporting agency.

If a business received incorrect information before your credit report was corrected, you can ask that the credit bureau provide them with corrected versions. You can require that the credit bureau mail corrected reports to all those creditors who received reports during the previous six months.

E. If Your Bad Credit Report Is The Result Of A Dispute Between You And A Business

If your bad credit report is the result of a dispute with a business, you can summarize your description of a disputed claim, and that summary must be included in each future report. The

information may be limited to two hundred words. (Under federal law, wholly out-of-state credit bureaus may limit the statement to one hundred words.) As was the case with corrected information, you may request that all creditors who received a copy of your report during the previous six months, be provided with a new report containing your dispute wording.

Federal laws set limits on how long bad credit references can remain on your record. Those laws, which supplement the Maine Statutes, state that bankruptcies can remain on your credit report no longer than ten years. All other negative information must not remain more than seven years.

F. Who Can Receive A Copy Of Your Report?

Maine law allows release of your report only to persons who have a “legitimate business need” for the information. Credit bureaus, which are private companies, provide the information to “subscribers,” who pay for the service and who utilize the information for credit decisions. Those users of the reports must certify their identities, and the uses to which they will put the report. The penalties for violations of these confidentiality laws are harsh: a person who falsely obtains information from a credit bureau, or a credit bureau employee who knowingly releases information to someone who should not see it, may be fined and/or imprisoned by a court. In addition, a court may find a credit bureau liable for money damages, and may order that it pay attorneys’ fees in a civil action brought by a consumer.

G. Credit Repair Companies

“Credit Repair Companies” have the same abilities as you to discover and correct faulty credit report information. Like you, they will be unable to rid your report of valid negative information.

For a fee, the less scrupulous of these companies flood the credit bureaus with appeals or challenges to each and every item of derogatory credit information on your record. The intent is that some of the information will not be verified within the statutory time allotted, and thus will be removed from your report.

This method is not effective. Under Maine law, the time limits may not apply to a credit bureau if it can demonstrate that the verification requests were “frivolous.” If a credit bureau argues that, without good cause, you had challenged each and every unfavorable credit item on your report, it would likely prevail in a showing that the appeals were frivolous. Upon such a showing, the items would likely remain on your credit report.

It is against the law for a telemarketer to call you and ask for money up front to “clean up” your credit record.³

If you decide to respond to a credit repair offer the Better Business Bureau suggests that you beware companies that:

- (1) do not tell you your legal rights and what you can do (legally) for free;
- (2) recommend that you pay for their services before any services are provided;
- (3) recommend that you do not contact a credit bureau directly; or
- (4) advise you to dispute all information in your credit report or take any action that seems illegal, such as creating a new legal identity (this can be a crime).⁴

Credit repair companies doing business in Maine are required to be registered. Before you decide to pay a credit repair agency to fix your report, call the Bureau of Consumer Credit Protection at 1-800-DEBT LAW.

³ See 9-A M.R.S.A. §§ 10-101 - 10-401.

⁴ See 15 U.S.C. § 1679 b; *F.T.C. v. Gill*, 265 F.3d 944 (9th Cir. 2001).

H. Enforcing Credit Report Laws

The Maine Bureau of Consumer Credit Protection enforces the Maine Fair Credit Reporting Act.⁵ The Bureau has the legal right to receive and investigate consumer complaints, and has the power to hold hearings to determine whether violations of the Act have occurred.

I. Credit Bureaus (Consumer Reporting Agencies) Currently Operating In The State Of Maine

The following are the three major credit bureaus. For a copy of your report or to report fraud, contact:

- (1) Equifax – www.equifax.com
To order your report, call: 1-800-685-1111
or write: PO Box 740241, Atlanta, GA 30374-0241
To report fraud, call: 1-800-525-6285
and write: PO Box 740241, Atlanta, GA 30374-0241
- (2) Experian – www.experian.com
To order your report, call: 1-888-EXPERIAN (397-3742)
or write: PO Box 949, Allen, TX 75013-0949
To report fraud, call: 1-888-EXPERIAN (397-3742)
and write: PO Box 949, Allen, TX 75013-0949
- (3) Trans Union – www.tuc.com
To order your report, call: 1-800-916-8800
or write: PO Box 1000, Chester, PA 19022
To report fraud, call: 1-800-680-7289
and write: Fraud Victim Assistance Division, PO Box 6790, Fullerton, CA 92634

Consumers are entitled to a free copy of their credit reports if they have been denied credit by a lender. In addition, consumers who are (1) public welfare recipients; (2) unemployed and seeking work; or (3) the victims of credit fraud are entitled to a free copy of their credit report once a year upon request. See § 26.15 for a sample letter to use when requesting a copy of your report. In Maine, the most you can be charged for a copy of your report is \$2 plus the cost of copying.

§ 26. 3. Credit Card Consumer Protections

A. Unasked For Credit Cards

According to federal and state law, you cannot be issued a credit or charge card you did not apply for or request. However, the law says you may be sent a replacement or renewal card without filling out another application. Note: In some cases it is legal for an issuer to send a bank credit card as a replacement for a store credit card, such as when the store is sold to a national chain which accepts the bank credit card.

B. Increased Charges For Use Of A Credit Card

A merchant cannot charge you more if you choose to use a credit or charge card. However, a merchant may offer a discount from a listed price to a customer who pays cash, as long as the offer is made known to everyone.

⁵ 10 M.R.S.A. §§ 1311-1329.

C. Lost Credit Cards

If you lose your credit cards, you should phone the credit card company immediately and report that your card is missing. Your monthly billing statement will list the phone number for reporting lost cards. The issuer will cancel your card so no unauthorized charges can be made with it.

To create a record for the credit card company and for your own files, write to the company after you have phoned. Include in this letter your name, account number, the date you believe you lost your card, the date you reported the card missing and the name of the person you spoke to when you called the company.

You will not be liable if you notify your credit card issuer that your cards were lost or stolen before unauthorized charges are made. Even if your cards are used before you report them missing, the *most* you can be liable for is \$50 per account.

D. Credit Card Issuers Can Be Responsible For The Acts Of Merchants

If you pay for your goods and services with your credit card and you then have a dispute with the merchant because you think the merchant has violated the contract (*e.g.*, did not deliver the goods you ordered, misled you as to what goods or services would actually be provided, etc.) then any claims or defenses (other than tort claims) you might have against the merchant can also be raised against the issuer of your credit card.⁶ However, before you can refuse to pay the issuer of your credit card, the following requirements must be met:

- (1) You must have made a good faith effort to resolve your dispute with the merchant. This can be accomplished by writing a letter to the merchant and keeping a copy of your letter as proof that you attempted to resolve your dispute.
- (2) The amount of the initial transaction with the merchant must exceed \$50; and
- (3) The place where the initial transaction occurred has to have been in Maine (or within 100 miles of your Maine address).

In general, we believe that when a merchant (whether instate or out-of-state) contacts a consumer in the home, either in person, by telephone or by mail, then the transaction is taking place in the state of Maine and therefore any claims or defenses the consumer might have against the merchant can also be raised against the credit card issuer. Nevertheless, do not wait more than two billing cycles to dispute the charges, in writing, to your credit card issuer (*see below* ¶ F).

E. Common Consumer Credit Card Defenses

Here are some of the most common claims and defenses you can raise against both the merchant and the issuer of the credit card:

- (1) The merchant's sales presentation either misrepresented a material fact, created an impression that was false and that the seller did not believe to be true, or made a false promise that the seller did not intend to perform or knew would not be performed.⁷
- (2) The merchant violated either the Maine Consumer Solicitations Act⁸ or the Maine

⁶ 9-A M.R.S.A. § 8-303(6). These limitations do not apply if the merchant itself issued or controls the credit cards you made the purchase with.

⁷ 9-A M.R.S.A. § 5-117.

⁸ 32 M.R.S.A. §§ 4661-4671. The Maine Consumer Solicitation Sales Act applies to mail orders when a salesman contacts the consumer in the consumer's home "by means of and including, but not limited to, a personal visit or a telephone call upon the consumer... without the consumer soliciting the initial contact" 32 M.R.S.A. § 4662.

Transient Sales Act.⁹ A violation of either of these statutes is both an unfair trade practice and a Class D crime. *See* Chapter 13 of this Guide.

- (3) The merchant was responsible for significantly violating the contract. For example, the merchant never provided the goods or services that were described to the consumer either in the mail solicitation or the phone solicitation.

Here are the steps you should take if you decide you have a good claim or defense against a merchant and you made the purchase by credit card:

- (1) Contact the merchant in writing and attempt to resolve the problem. There is no specific formal procedure required, but you must make an honest attempt to resolve your dispute. Remember to keep a copy of your letter.
- (2) If the merchant will not cooperate, notify the credit card company in writing that you are withholding payment for the disputed charge.
- (3) In your notification, inform the credit card company of your name, account number, the item, the reference number, the amount you are refusing to pay, why you are refusing to pay, and the ways you attempted to resolve the problem. Pay the rest of the bill as usual. (Be sure to do this within two billing cycles.)
- (4) Keep in touch with the credit card company and pay the disputed amount if you still owe it, once the problem has been resolved.

F. Credit Card Billing Errors

Consumers can also challenge “billing errors” made by the issuer of the credit card.¹⁰ Included in billing errors are:

- (1) An inaccurate bill or an incorrect billing for a product or service the consumer never ordered;
- (2) A billing statement indicates that goods or services were delivered to the consumer when in fact *they were not or not delivered in accordance with the agreement* the consumer made with the seller;
- (3) A computation error or similar error of an accounting nature; or
- (4) The creditor’s failure to send a periodic statement to the consumer’s last known address.

If there is an error on your credit card bill, you should write to the credit card company on a separate piece of paper. Do not write on your bill. Do not send the letter to the regular billing address. The letter should be sent to the listed credit card “billing error” address, stating that an error has been made. You should include:

- (1) your name and address;
- (2) the account number; and
- (3) the nature and the amount of the error.

⁹ 32 M.R.S.A. §§ 14701-14716. The Transient Sales Act applies when the seller contacts the consumer by mail and offers “merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who requires the recipient to pay something of value in order to participate in this offer, including but not limited to, entrance fees, processing fees or handling charges.” 32 M.R.S.A. § 14701(8).

¹⁰ 9-A M.R.S.A. § 8-401.

This notice is effective *only* if the company receives it within *60 days* of the date the bill was first sent to you. Note: Your billing rights, and the billing “error” address, should be printed on the front or back of each credit card statement.¹¹

If your billing problem is not resolved within 30 days, the company must acknowledge your complaint and begin an investigation. Within 60 days after that, the company must either correct the item or explain to you in writing why it feels the charge is correct.

You do not have to pay the amount of the bill you dispute while it is being investigated. NOTE: *The portion of the bill not in dispute must be paid as usual.* However, if the investigation proves that you were wrong and the company is right, you will be expected to pay the charges as well as any additional finance charges incurred during the delay. See also § 26.4 for a more detailed discussion of these rights.

G. Credit Card Rights Can Be Difficult To Enforce

While consumers greatly benefit from these credit card rights, they can often be difficult to enforce. Here is a description of some of the problems facing credit card customers:¹²

Some 75 million U.S. consumers now charge more than \$200 billion a year on their 200 million bankcards. The cards have obvious advantages, including the neat monthly record of purchases and the chance to withhold payment on anything undelivered or unacceptable.

But there can be problems. Bankcards are actually rather difficult products that leave many people feeling helpless. No descriptive receipts come with the bill, not paying in full kicks off a retroactive loan that can go back two months and finance charges are applied according to variable and incomprehensible formulas that very few customers understand.

There are even unexpected dangers. An unfamiliar name appearing on a bill could be a business billing in the name of its owner corporation, a confusing practice prohibited by the operating rules of both the MasterCard and Visa associations. It could also indicate a credit card receipt “laundering” scheme, in which some disreputable business (often, these days, a telemarketing firm) gets a cardholder’s account numbers, then contracts with a legitimate (if greedy) business to bill them for inferior goods or fictitious purchases. Many consumers, apparently, pay without question.

The applicable regulations are also difficult. Consumers must figure out whether they have a billing error (wrong charge, wrong item, something not delivered) or a dispute over the quality of goods or services purchased. If the problem is a billing error, they must file their dispute within 60 days, wait up to 90 days for their bank’s “reasonable investigation” and need not pay the disputed charges or related finance charges during that time.

If the charge was theirs, they must pay up, and banks can (but rarely do) tack finance charges onto that amount. But whether the consumer was right or wrong, finance charges cannot be applied to any undisputed amounts if withholding the disputed amount was what kicked off the finance charge. Someone with thousands in charges who paid all but a disputed \$20 should not pay interest on all his purchases because he was \$20 short of full payment. It would “discourage people from disputing charges at all,” said Nessa Feddis, federal counsel at the district-based American Bankers Association.

The third difficulty is the dispute procedure, involving not just the consumer and merchant, but also the relentless computer and several intermediaries concerned about monies they have already advanced. The “reasonable investigation” required of the cardholder’s bank often involves just sending the charge back to the merchant, who can still refuse the “charge-back,” at which point the cardholder is told to pay up.

¹¹ 9-A M.R.S.A. §§ 8-401-8-404.

¹² See Diamond, “Disputing Credit Card Charges,” *The Washington Post* H7 (September 2, 1990) (reprinted from the *Los Angeles Times*).

What's more, bank service representatives do not always understand the procedure themselves. "They may not tell card-holders they have to write," said Gerry Detweiler, education coordinator at Bankcard Holders of America, a Washington-based consumer group, and "later, the issuer can say 'Sorry, you didn't put it in writing'." They may tell consumers that they cannot dispute charges already paid (although they can), or may give them, erroneously, the rules for asserting a quality dispute (telling them, for example, that they must first try to resolve the dispute directly with the merchant).

Many, Detweiler said, press the consumer "for irrefutable proof that he is right," when they should be pressing the merchant for his proofs. And when the merchant insists that the charge is valid, it's over: "The bank's whole 'resolution' is the merchant's word," said Elgie Holstein, director of Bankcard Holders.

If you believe you've been improperly charged for an item, but are confused as to how to proceed, make sure you write or call the Maine Bureau of Banking (207-624-8570). The Bureau deals with Bank credit cards and can advise you on how to proceed.

§ 26. 4. Fair Credit Billing Laws

A. Introduction – Disputing Bills For Credit Purchases

Both federal and state fair credit-billing laws provide protection to consumers who dispute a bill for a purchase made on credit.¹³ This includes telephone transactions. The following disputes are covered:

- (1) Charges not made by the consumer or anyone authorized to use the account;
- (2) Incorrect charges for which the wrong amount or date is shown;
- (3) Charges for goods or services the consumer did not accept or were not delivered as agreed;
- (4) Computational or similar errors;
- (5) Failure to reflect payment or other credits;
- (6) Not mailing or delivering bills to the consumer's current address (provided a change of address was given at least 20 days before the end of the billing period); and
- (7) Charges for which consumers request an explanation or written proof of purchase.

B. How To Settle A Dispute

Consumers should act immediately after an incorrect charge appears on a bill by writing to the creditor and giving notice of the error. *This written notice must reach them within 60 days of the error's first appearance on the bill.* A letter to the creditor or bank should include the following information:

- (1) Name and account number;
- (2) Statement of why the bill is incorrect and dollar amount involved; and
- (3) Documents supporting your claim, *i.e. copies* of the bill, sales slip, etc.

¹³ See 9-A M.R.S.A. § 8-401-8-404, Maine Fair Credit Billing Act.

The letter should be sent by certified mail, with a return receipt requested for proof of mailing and receipt dates. Photocopies of sales slips or other documents may be enclosed, but originals should be kept as records.

The creditor must respond to the customer's letter within 30 days after receipt and must investigate the complaint within 2 billing cycles (but not more than 90 days), and either correct the bill error or give an explanation. The consumer need not pay the disputed amount or any relevant finance charges while the bill is under dispute, but should pay all other charges not related to that amount. During the dispute, the creditor cannot report the account to a credit agency, or take any action. The account may not be closed or restricted, but the disputed amount may be applied against the credit limit.

If the outcome of the investigation is in the customer's favor, the creditor must change the account and explain the billing error or dispute. All finance charges, late fees and other charges relating to the disputed amount must be removed. If the customer does not win the dispute, that amount must be paid by the customer as well as finance charges accumulated during the investigation. The customer may still write to the creditor within 10 days after receiving the notice and refuse to pay, but collection procedures may begin. However, if the customer is reported to a credit bureau, it must be noted that the amount is under dispute. Consumers must be notified of who receives such reports.

§ 26. 5. Debt Collection Practices

A. Introduction

Federal and state law prohibits abusive, deceptive and unfair collection practices by debt collectors under The Fair Debt Collection Practices Act.¹⁴ These laws apply to all collection agencies conducting business within Maine and any debt collector collecting or attempting to collect a debt from a resident of the state. Most reputable debt collectors comply with these laws. The law will not permit debt collectors to use unjust means while attempting to collect a debt. But the law does *not* cancel genuine debts which consumers owe. When you have a purchase billed to you or make a purchase on credit, you are expected to pay your bills at the agreed times. After all, the merchant has paid for the products and has met all other costs before receiving any money from you. So, the merchant has the right to expect the proper payment at the proper time.

B. Fair Debt Collection Practices Act

The federal and Maine Fair Debt Collection Practices Acts cover personal, family and household debts, such as money owed for the purchase of a car, for medical care or for charge accounts. Under this law, a debt collector is anyone other than the person to whom you owe money or that person's attorney, who *regularly collects debts* for others. Not all debt collectors are subject to these laws. It does not apply to banks, other lenders, or businesses which collect their *own* accounts, using their own names. Some of the more common types of debt collectors covered by these debt collection laws are credit bureaus and collection agencies. The Maine Legislature recently required lawyers who regularly collect debts to adhere to the same restrictions imposed on all other debt collectors.¹⁵

¹⁴ 32 M.R.S.A. §§ 11001-11054.

¹⁵ See 32 M.R.S.A. §§ 11011-11016, *e.g.*, a description of what collection measures will be considered deceptive, oppressive or abusive.

C. *Prohibited Debt Collection Practices*

The following practices are prohibited by the Fair Debt Collection Practices Act:

- (1) A debt collector may not harass, oppress, or abuse any person (*e.g.*, use threats of violence to harm anyone or anyone's property or reputation; use obscene or profane language);
- (2) A debt collector cannot publish or publicize a list of consumers which says you have refused to pay your debts;
- (3) A debt collector must not be unfair in attempting to collect any debt (*e.g.*, contact you by postcard; threaten legal action unless the *creditor* (not the debt collection agency) intends to take such action);
- (4) A debt collector may not use any false statements when collecting any debt (*e.g.*, falsely imply that the debt collector represents the United States government or any local government agency; falsely imply that the debt collector is an attorney);
- (5) A debt collector may not give false credit information about you to anyone; and
- (6) A debt collector may not say that you will be arrested or imprisoned if you do not pay your debt or that the collector will seize, garnish, attach or sell your property or wages unless the *creditor* intends to do so and it is legal. In Maine, it is not legal to do any of these things prior to a court judgment on the validity of a debt incurred in a *credit contract* (*i.e.*, payment of interest or finance charges). Under certain circumstances, other debts can result in the attachment of property (but not wages) prior to a court hearing.

D. *What If You Are Sued On A Debt?*

If you are sued by a creditor for a debt either in Small Claims or District Court, you may be tempted to ignore the complaint. Do not do so. Failure to respond to a complaint served by the Court can result in a default judgment enforceable by the creditor against you and your assets. This judgment in most cases cannot be reviewed or changed.

E. *What If The Debt Collector Breaks The Law?*

You have the right to sue a debt collector in a state or federal court within one year from the date the debt collection law was violated. You may recover money for actual damage you suffered by the debt collector and additional damages as allowed by a court up to \$1,000. Court costs and attorneys' fees can also be recovered.¹⁶

F. *How May A Debt Collector Contact You?*

A debt collector may contact you in person, by mail, telephone, or telegram. However, it can't be at an inconvenient or unusual time or place, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector may not contact you at work if your employer objects.

You can stop a debt collector from contacting you by saying so in writing. The letter you send to the debt collector should say something similar to: **"I'm hereby exercising my rights under federal law and I want you to stop contacting me. I will deal with my creditor directly."** The letter should be sent by certified mail to the debt collector with a return receipt requested. Remember to keep a copy of the letter for yourself. Once you tell a debt collector not to contact you the debt collector can no longer do so, except to tell you that there will be no further contact. Also, the debt collector may notify you that some specific action may be taken, but only if the debt collector or the person to whom you

¹⁶ 32 M.R.S.A. § 11054.

owe money usually takes such action.

G. What Other Persons Can A Debt Collector Contact?

A debt collector may contact any person to locate you, or verify your address. However, the debt collector must:

- (1) Only tell people that the purpose is to try to confirm or correct location information such as your address, telephone number or place of employment;
- (2) Only contact your attorney if the attorney is representing you concerning this debt.

The debt collector may contact your spouse, parent (if you are a minor), guardian, executor or administrator.

The debt collector must not:

- (1) Tell anybody else that you owe money;
- (2) In most cases, talk to any person more than *once*;
- (3) Use a post card;
- (4) Put anything on an envelope or in a letter or telegram that identifies the writer as a debt collector.

H. What Is The Debt Collector Required To Tell You About Your Debt

Within 5 days after you are first contacted, the debt collector must send you a written notice telling you:

- (1) The amount of money you owe;
- (2) The name of the person to whom you owe the money;
- (3) The debt will be assumed to be valid unless disputed within 30 days.

The notice must also tell you that, if the bill is disputed, the collector will verify it and send a copy of the verification or copy of the judgment against the consumer and that, upon request, the name and address of the original person to whom you owe money, if changed, will be provided.

I. Disputing A Bill

A debt collector must not contact you if you send a letter within 30 days after you were first contacted saying that you dispute the bill and that you do not owe the money. However, a debt collector can begin collection activities again if you are sent proof of the bill, such as a copy of the bill.

§ 26. 6. Repossessions Of Goods In Maine

A. Introduction

Creditors who have a security interest in an item in order to secure a debt (*e.g.*, a stove, television, car, etc.) have the general right to repossess goods that consumers are unable to pay for. This right to repossess is regulated by The Maine Consumer Credit Code Limitations on Creditors' Remedies.¹⁷ Any repossession for failure to make required payments must be preceded by a "Notice Of Right To Cure Default," which warns the consumer that failure to pay can result in repossession of the goods.¹⁸ If the creditor takes possession of the goods and the amount financed is \$2,800 or less, then the

¹⁷ 9-A M.R.S.A. §§ 5-101-5-117.

¹⁸ 9-A M.R.S.A. § 5-110.

consumer is no longer personally liable for the unpaid balance of the debt.¹⁹ In order to illustrate how repossessions can occur, this section will describe in detail consumer rights when a car is being repossessed.²⁰

B. Repossession Of An Automobile: Notice Of Right To Cure Default

When default results from failure by the consumer to make a required automobile payment, repossession may not occur until the consumer has been provided with a valid “Notice of Right to Cure Default” and the cure period has passed. The Notice may not be given until the default has existed for at least 10 days. Repossession may be pursued *without* such a notice and cure period only if the default occurs within 12 months after an earlier default in which an earlier Notice had been provided to that consumer, or if the default is for reasons other than a failure to make a required payment. NOTE: To prove mailing of a Cure Notice, creditor files should contain a dated “certified mail” or “certificate of mailing” receipt for each debtor.²¹ If a consumer has filed a bankruptcy petition, such filing effects an “automatic stay” on all collection activity, including repossessions.

A notice to cure is not necessary if the consumer has voluntarily surrendered possession of the car or if the consumer is in default in some manner other than a failure to make a required payment.²²

C. No Breach Of The Peace

A creditor or its agent cannot use force or breach the peace,²³ and cannot enter into a dwelling to repossess a vehicle. If a consumer responds to a threatened repossession by blocking passage to a vehicle or getting into the vehicle, the creditor or its agents must immediately cease repossession efforts. In fact, the Maine Bureau of Consumer Credit Protection is of the opinion that it can be a breach of the peace if the consumer resists verbally to repossession.²⁴ In the absence of a court order, creditors may not use police officers, sheriff’s deputies or other public officials to assist in repossessing collateral. Creditors may not intimidate or harass consumers in order to accomplish repossession.

D. Property In The Vehicle

Any property which can easily be detached from (and is not “integral” to) the vehicle must be immediately made available to the owner. Careful creditors make a written inventory of all such property, and notify consumers of the property’s availability as soon as possible after repossession.

E. Storage Of The Vehicle

All actions of the creditor with respect to repossessed collateral must be commercially reasonable. In its examination of credit records, the Bureau of Consumer Credit will disallow unreasonable charges which accrue during storage. Unless storage charges can be justified (due to the probability of redemption, or to await an advantageous change in the sale price), such costs may be reduced. If a decision is made to store a vehicle to wait for more seasonable conditions (for example, storing a

¹⁹ 9-A M.R.S.A. §§ 5-103(2).

²⁰ An excellent summary of your repossession rights can be found in the Bureau of Consumer Protection’s free 1993 publication, “Downeaster Guide To Debt Collection and Repossession,” available by calling 1-800-DEBT LAW.

²¹ See *Griffin v. Chrysler Credit Corp.*, 553 A.2d 653, 654 (Me.1989). (Under the Consumer Credit Code, U. S. Post Office certificate of mailing of notice to consumer concerning default and right to cure was conclusive proof, not a rebuttable presumption, that consumer had received notice.)

²² See *In re Galligan*, 10 B.R. 841 (Bkrtcy. Me. 1981).

²³ 9-A M.R.S.A. 5-112.

²⁴ In October, 1993, the Wisconsin Court of Appeals held that a verbal objection by a consumer should suffice to stop a creditor’s repossession effort, and that failure to heed the verbal objection constitutes a breach of the peace in violation of state law See *Hollibush v. Ford Motor Credit Co.*, Wisconsin Court of Appeals, No. 92-0801, reported in *Consumer Credit Guide*, 1/18/94, ¶95,487). The Court reasoned that a verbal objection customarily precedes violence, and that public policy requires that it not be necessary for consumers to resort to physical violence in order to establish a breach of the peace.

motorcycle during the winter, for sale in the spring), the creditor must be able to show that it could have expected that the increase in sale price, due to the delay, would exceed the storage fees for the period in question.

F. Notice Of Right Of Redemption

The Uniform Commercial Code requires notice to the consumer of the date of a public sale, or of a date after which a private sale may occur. The notice tells a consumer of his or her right to pay the balance (including reasonable repossession expenses) to redeem the collateral. This notice is in addition to any Notice of Right to Cure Default which may have already been provided to the consumer. If a creditor proposes to keep the property in full satisfaction of the debt, consumers must be notified in writing of their right to require a sale, if they so desire.

G. Resale Of Repossessed Vehicle

Any resale must be advertised and conducted in a commercially reasonable manner. Except in certain limited circumstances, the creditor may not itself purchase the collateral unless it is sold at a public sale. In a recent case involving a large Maine used car dealer and its financing arm, the Attorney General filed an Unfair Trade Practice Complaint²⁵ against Credit Now for secretly purchasing repossessed cars at a dealer's-only wholesale auction and then selling them again off a Credit Now retail lot. This "churning" of repossessed cars allowed Credit Now to obtain not only loan deficiencies based on relatively low wholesale auction prices but also, when it later sold the vehicles off its retail lots, high retail prices that it did not have to share with the defaulting consumers. Since the creditor (Credit Now) must return to the defaulting consumer any "surplus" from the sale of the repossessed car (money in excess of the consumer debt), this churning allowed Credit Now to avoid returning surpluses to consumers. The State settled its case with Credit Now and as a result Credit Now forgave the debts of approximately 600 consumers and paid a \$40,000 Civil Penalty.

Dealers and creditors frequently dispose of repossessed automobiles at auctions which are open only to auto dealers and which do not permit debtor or other retail buyer participation. These auctions, whether considered to be private or public sales, could well be vulnerable to claims that they are commercially unreasonable because the wholesale price could be too low compared to the price that could be obtained if the vehicle had been sold at retail. This argument can be particularly persuasive if the company repossessing the vehicle also owns its own retail lots.

Dealer-only auctions may also be unfair because they are closed to the debtors and they have no way to protect their interests. Uniform Commercial Code, 11 M.R.S.A. § 9-504, Official Comment #5, in explaining the notice of resale required to be sent to the debtor, states that: "[A]t a minimum it must be sent in such time that persons entitled to receive it will have sufficient time to take appropriate steps to protect their interest by taking part in the sale or other dispossession, if they so desire." This strongly suggests that the possibility of debtor participation is a requirement of commercial reasonableness.

When a creditor repossesses collateral and resells it at a public sale, one of the requirements of the U.C.C. is that the creditor give notice of the intended sale to members of the public who might be expected to buy at the sale. The advertising and notice of the sale must give prospective buyers enough time to make arrangements necessary to attend the sale and purchase the collateral, if they wish. In addition, advertising must adequately describe the goods to be sold and the condition of sale.

²⁵ *State v. Linnehan Leasing (d/b/a/ Credit Now Auto Company), and Atlantic Acceptance*, No. CV-02-___ (Me. Super. Ct., Kenn. Cty., May 7, 2002) (UTPA Consent Decree required defendants to forgive the debts of any consumers who cars were churned and pay a \$44,000 Civil Penalty).

H. Voluntary Repossessions

The most common complaint at the Office of Consumer Credit Regulation concerning repossessions occurs when consumers are surprised by a “Notice of Deficiency Balance” after having been led to believe (or not having been disabused of the belief) that voluntary return of the automobile would satisfy the debt in full. If a dealer intends to treat a voluntary return as repossession and if the dealer intends to report it as such on the consumer’s credit report, the consumer should not be misled about these intentions. Remember, if you have any complaints about the repossession of your automobile, they should be referred to the Office of Consumer Credit Regulation (35 State House Station, Augusta, Maine 04333-0035, 207-624-8527; 1-800-DEBT LAW). Repossession is considered a collection activity in Maine, and repossession companies with Maine clients or offices must be licensed with the Office of Consumer Credit Regulation as collection agencies.

§ 26. 7. Check Cashing Consumer Protections

A. Returned Check Charges

Consumers cannot be charged for returned checks when making installment or credit payments. In the opinion of the Office of Consumer Credit Regulation, assessing such charges improperly increases the cost of such credit. Such charges may be utilized in “cash sales” by merchants, so long as the merchant can prove that assessment of such a charge was a condition of cashing or honoring the check. Posting and publicizing the policy adds to consumer awareness and strengthens the merchant’s claim to entitlement of such a charge.

B. Requiring A Credit Card For Identification

Merchants should be aware that they cannot require a bank credit card as a form of identification when a consumer presents a check (if the customer does not have one). However, the law does not prohibit the merchant from requiring other forms of reasonable identification.²⁶

C. Civil Liability For Bad Checks

Maine law allows anyone receiving a bad check to give to the issuer of the check a notice demanding reimbursement for the amount of the check, plus bank fees and mailing costs, within 10 days. If the notice is ignored, a Small Claims Court action assessing attorneys’ fees, service costs, processing charges and interest may be brought. Remember, *intentionally* negotiating a worthless instrument (*i.e.*, “bouncing” a check) can be a criminal offense.²⁷

²⁶ 10 M.R.S.A. § 1131

²⁷ 17-A M.R.S.A. § 708.

§ 26. 8. Truth In Lending Disclosures When Granting Credit

Credit costs vary. By remembering two terms, you can compare credit prices from different sources. Under the federal and Maine Consumer Truth in Lending (TIL) laws,²⁸ the creditor must tell you—in writing and before you sign any agreement—the *finance charge* and the *annual percentage rate*.²⁹

The finance charge is the total dollar amount you pay to use credit. It includes interest costs, and other costs, such as service charges and some credit-related insurance premiums. For example, borrowing \$100 for a year might cost you \$10 in interest. If there were also a service charge of \$1, the finance charge would be \$11.

The annual percentage rate (APR) is the percentage cost (or relative cost) of credit on a yearly basis. This is your key to comparing costs, regardless of the amount of credit or how long you have to repay it.

Again, suppose you borrow \$100 for one year and pay a finance charge of \$10. If you keep the entire \$100 for the full year and then pay back \$110 at the end of the year, you are paying an APR of 10%. But if you repay the \$100 and finance charge (a total of \$110) in 12 equal monthly installments, you do not really get to use the \$100 for the whole year. In fact, you get to use less and less of that \$100 each month. In this case, the \$10 charge for credit amounts to an APR of 18%.

All creditors—banks, stores, car dealers, credit card companies, and finance companies—must state the cost of their credit in terms of the finance charge and the APR.

§ 26. 9. Maximum Finance Charges

Maine law puts specific limitations on the interest rates that can be charged when consumers purchase goods on credit. In general, there are two kinds of credit sales: (1) an “open-end credit” sale, which primarily includes credit card and home-equity “line of credit” transactions; and (2) “fixed-term credit” transactions, which include, for example, bank loans for the purchase of a car.³⁰ In general, Maine credit rate limits include the following:

- A. *Purchase of a Car* (fixed-term credit): 18% per year (does not apply to auto loans);
- B. *Finance Charges for Home Repairs* (fixed-term credit): 18% per year on the unpaid balance of the amount financed;
- C. *Manufactured Housing Loans* (fixed-term credit): not more than 2% greater than the maximum established by federal regulations, or 18% per year, and;
- D. *Fixed-Term Loans*³¹ (not including loans for manufactured housing):
 - (1) The total of:

²⁸ 9-A M.R.S.A. §§ 8-101-8-404. Even if a TIL disclosure does *not* violate TIL, it can still be an illegal unfair trade practice; *See e.g., Thernien v. Resource Financial Group*, 704 F. Supp. 322 (D.N.H. 1989).

²⁹ This disclosure requirement applies even if the loan is for a use that is part commercial. *See Vicnire v. Ford Motor Credit Co.*, 401 A. 2d 148, 151-152 (Me. 1979) (law applies to vehicle purchase when vehicle was the only family vehicle, even though it also has a secondary use of transporting cattle).

³⁰ These limits are set forth in detail at 9-A M.R.S.A. §§2-201 - 2-202; 9-A M.R.S.A. §2-402.

³¹ *See below*, § 26.12, for limits placed on pawnshop transactions.

- (a) 30% per year on that part of the unpaid balance of the amount financed which is \$1000 or less;
 - (b) 21% per year on that part of the unpaid balance of the amount financed which is more than \$1000 but does not exceed \$2,800; and
 - (c) 15% per year on that part of the unpaid balance of the amount financed which is more than \$2,800; or
- (2) 18% per year on the unpaid balance of the amount financed, whichever is greater.

E. *Insurance Premium Loans*: may not exceed 18% per year.

Violation of these credit limits is the modern version of the ancient offense of “usury.” But these limits are valid only for transactions taking place in the State of Maine or with a credit card issued by a Maine institution. If a creditor has contracted for or received a charge in excess of these amounts, then the debtor may be entitled to a refund and a civil penalty of not less than \$250 nor more than \$1,000. Attorney fees might also be recoverable.³² Keep an eye out for “hidden” finance charges. For example, a seller might offer an item (e.g., a used car) at a specific price and then increase the price when the buyer reveals that he or she needs financing. When the buyer questions the reason for the increase the seller might answer; “If you’re going to finance this purchase I have to charge you an additional finance fee.” This is an illegal finance charge and a form of “bait and switch.” You could also be paying an illegally high finance charge (once you add in the deceptive last minute price increase).³³ If you suspect you’ve been the victim of a hidden finance charge, contact the Maine Office of Consumer Credit Regulation (207-624-8527).

§ 26. 10. Co-signing A Loan

At some time or other almost everyone has been asked by a friend, relative or colleague to co-sign a loan. Before co-signing anything, however, the Office of Consumer Credit Regulation recommends that you read and understand the following information that the Federal Trade Commission now requires to be given to all potential co-signers:

You are being asked to guarantee this debt. Think carefully before you do. *If the borrower doesn’t pay the debt, you will have to.* Be sure you can afford to pay if you have to, and if you do indeed want to accept this responsibility. You may have to pay the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increases this amount. The creditor can use the same collection methods against you as the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, the fact may become part of your credit record. Consider the following: some studies indicate that, with certain types of loans, three out of four co-signers are asked to repay the loan. You are being asked to take a risk that a professional lender will not take. And if you decide to co-sign a

³² 9-A M.R.S.A. § 5-201(4). See *Poussard v. Commercial Credit Plan*, 479 A.2d 881, 885-86 (Me. 1984) (award of \$20,000 in attorneys’ fees for violations involving several credit statutes and Unfair Trade Practices Act was not excessive, even though the total recovery of the plaintiff was only \$10,000).

³³ See *State of Maine v. Wilson Street Automotive* (Penobscot Superior Court Consent Decree, Docket Number CV-94-65, July 15, 1996).

loan, be sure you get copies of all important papers, and consider asking the lender to inform you if the borrower misses a payment, thereby giving you time to resolve the problem before it gets out of hand.

§ 26. 11. Lease And Rent-To-Own Purchases

In recent years, the Legislature has enacted new protections for consumers entering into lease or rent-to-own agreements. For example, consumer leases are subject to the Maine Unfair Trade Practices Act³⁴ and lessors cannot disclaim implied warranties.³⁵ Consumers entering into a rent-to-own contract now are guaranteed full disclosure of their rights and responsibilities³⁶ and are protected from unfair practices³⁷ and repossessions.³⁸ Also, rent-to-own merchants must display a point-of-rental placard on any display item offered for rental/purchase, so that shoppers can better understand the cost of renting versus purchasing the item and whether the item is new or used.

§ 26. 12. Pawnbrokers

Pawnbrokers are regulated by the Office of Consumer Credit Regulation.³⁹ Consumers who pawn items will now receive a Truth-In-Lending (TIL) disclosure form which will state:

- A. The amount financed;
- B. The finance charge;
- C. Total of payments; and
- D. Annual percentage rate (the cost of your credit on a yearly rate).

The interest rate on pawnbroker loans cannot exceed 25% each month on that part of the loan which is \$500 or less and 20% each month on that part of the loan which is more than \$500, made upon the property pawned.⁴⁰ Pawnbrokers must be either licensed by the municipality or have a state lender's license. This new law covers not only traditional pawns but also "purchase with right to repurchase agreements." Failure to follow this new law is not only a Consumer Credit Code violation, but can also be a violation of the Maine Unfair Trade Practices Act.

§ 26. 13. Seeking Help

The Maine Office of Consumer Credit Regulation effectively enforces Maine's many credit laws. If you have a credit related complaint, contact this agency (207-624-8527 or toll free (consumers only) in Maine: 1-800-DEBT LAW) and they will help resolve your problem. This agency's address is:

Maine Office of Consumer Credit Regulation
35 State House Station
Augusta, Maine 04333-0035

³⁴ 11 M.R.S.A. § 2-1104.

³⁵ 11 M.R.S.A. § 2-1214(5).

³⁶ 9-A M.R.S.A. § 11-108.

³⁷ 9-A M.R.S.A. § 11-109.

³⁸ 9-A M.R.S.A. § 11-113.

³⁹ 30-A M.R.S.A. §§ 3960-3963.

⁴⁰ 30-A M.R.S.A. § 3963(1).

Consumer Credit Regulation rarely deals with credit card complaints. If your credit card was issued by a bank chartered outside Maine, as is usually the case, (e.g., the A T & T card is issued by Universal Bank, NA; the Discover Card is issued by Sears National Bank, etc.), then any consumer complaints would be handled by the U.S. Comptroller of the Currency. If your card was issued by a Maine Chartered bank, then you should complain to the Maine Bureau of Banking (Consumer Outreach Program, 207-624-8570).

§ 26. 14. Correcting An Incorrect Credit Report

Here is a form letter you can use to correct your credit report. An alternative approach is to write to the credit reporting agencies that list the incorrect report (*See* § 26.2 (I) in this Guide) and allow the agency 21 days to verify or dispute the report.

Your Name

Address

City, State, Zip

Date

Credit Manager

Company Name of Creditor

Address

City, State, Zip

Dear Sir or Madam:

I'm writing under the provisions of the Fair Credit Billing Act to request that you correct your entry in my file at the (name of Credit Bureau). The entry incorrectly states

(explain the error).

I have attached to this letter the incorrect report and have circled the error. Please make this correction and confirm it to me within 90 days as required by law.

Signature

§ 26. 15. Obtaining A Copy Of Your Credit Report

Here is a form letter you can use to obtain a copy of your credit report.

Your Name

Address

City, State, Zip

Date

XYZ Credit Bureau

Address

City, State, Zip

Dear Sir or Madam:

Please send me a copy of my credit profile. Following is the pertinent information:

Name:

Social Security Number: _____

Birthdate: _____

Present Residence: _____

Past Residences (the last five years): _____

Signature

§ 26. 16. When The Seller Assigns Your Credit Contract To A Finance Company

Often when a consumer obtains credit financing in order to purchase an expensive consumer good, the seller will immediately assign the credit contract to a finance company. When that happens the consumer must pay the balance owed to the assignee finance company, not the creditor. But what happens if the consumer was the victim of an unfair or deceptive trade practice by the seller? Who can the consumer seek relief from? Thanks to the FTC Holder Rule the consumer can seek relief from both the seller and the assignee finance company. This is because the Holder Rule states that the finance company which purchases a consumer credit contract does so subject to any defenses the consumer might have against the seller. Based on the FTC Holder Rule, the Maine Attorney General has filed Unfair Trade Practice complaints not only against the seller but also the assignee finance company. This happened in the case of *State of Maine v. The Meat Market, National Credit Corporation, and Fair Finance Company*. The Attorney General alleged that consumers were deceived into purchasing large amounts of frozen meats on credit. The Meat Market had immediately assigned these credit contracts to out of state finance companies. Eventually, the Meat Market and the finance companies entered into a court ordered Consent Decree (while denying any wrongdoing) and consumers received back well over \$30,000.00 in restitution.⁴¹

⁴¹ See *State of Maine v. The Meat Market, National Credit Corporation and Fair Finance Company* (No. CV-94-65 (Me. Super. Ct., Penob. Cty., July 15, 1996). See also *State of Maine v. Wilson Street Automotive* (No. CV-96-294, Me. Super. Ct., Penob. Cty., October 22, 1996); *State v. Custom Pools*, 556 A.2d 72 (Vt. 1988); *State v. Excel Management Services, Inc.* 331 N.W.2d 312 (Wis. 1983).